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Firearms Dealers "Engaged in the Business"

On June 25, 2022, President Joe Biden signed into law the Bipartisan Safer Communities Act (BSCA; P.L. 117-159). Section 12002 of P.L. 117-159 amended definitions related to firearms dealer licensure in the Gun Control Act of 1968 (GCA, 18 U.S.C. §§921 et seq.). Under the GCA, the definition of "engaged in the business" undergirds provisions that require persons buying and selling firearms at the wholesale or retail level to be federally licensed as firearms dealers (FFLs). Section 12002 of P.L. 117-159 amended a subparagraph of the GCA definition of "engaged in the business" as it pertains to federally licensed firearms dealers by striking the language "with the principal objective of livelihood and profit," and replacing it with "to predominantly earn a profit." The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) further clarified which individuals are selling firearms to "predominantly earn a profit" in regulations at 27 C.F.R. §478.13, which went into effect on May 11, 2024. On May 6, 2026, ATF proposed significantly revising much of the aforementioned 2024 rule.

"Engaged in the Business" and Licensure

The GCA requires all persons engaged in the business of importing, manufacturing, and dealing firearms to be licensed as federal firearms licensees (18 U.S.C. §923). Under Section 922(a)(1)(A) of Title 18 of the U.S. Code, it is unlawful to engage in the business of importing, manufacturing, or dealing in firearms without a federal license. Offenses are punishable by up to five years of imprisonment. ATF is the federal agency that administers and administratively enforces the GCA and licenses FFLs. Section 921(a)(11) of the GCA defines the term "dealer" to mean

> (A) any person engaged in the business of selling firearms at wholesale or retail [i.e., firearms dealers],
>
> (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, trigger mechanism to firearms [i.e., gunsmiths], or
>
> (C) any person who is a pawnbroker.

Defining "To Predominantly Earn a Profit"

The amendment made by P.L. 117-159 that revised the definition of "engaged in business" further emphasizes a profit motive as a factual circumstance requiring federal licensure as a gun dealer by defining "to predominantly earn a profit" to mean

> the intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.

Regarding firearms transfers related to terrorism and other criminal conduct, this definition includes the following proviso:

> That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term 'terrorism' means activity, directed against United States persons, which—
>
> (A) is committed by an individual who is not a national or permanent resident alien of the United States;
>
> (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and
>
> (C) is intended—
>
> (i) to intimidate or coerce a civilian population;
>
> (ii) to influence the policy of a government by intimidation or coercion; or
>
> (iii) to affect the conduct of a government by assassination or kidnapping.

This provision is designated in the GCA as Section 922(a)(22) of Title 18 of the U.S. Code, and the definition of "with the principal objective of livelihood and profit" as it applies to licensed manufacturers and importers is codified at Section 922(a)(23).

Shift in Focus from Livelihood to Profit

Amendments made by P.L. 117-159 shifted the focus of the GCA dealer licensing requirement onto an intent to seek a profit by eliminating the "principal objective of livelihood" as a condition for licensure. For federally licensed firearms and ammunition manufacturers and importers, the "principal objective of livelihood and profit" remains a central condition requiring licensure. For federally licensed gun dealers, "to predominantly earn a profit" is now the central condition requiring licensure.

The amendments made by P.L. 117-159 are intended to require persons who buy and resell firearms for profit to be licensed federally as gun dealers, even if they do not do so with "the principal objective of livelihood." The definitional changes in P.L. 117-159 make some, but not all, intrastate private firearm transfers subject to GCA recordkeeping and background check requirements if those transfers are made by profit-oriented, repetitive firearms buyers and sellers. Such transfers were not necessarily covered under previous law if they were not also made for the "principal objective" of one's "livelihood." According to the sponsors of P.L. 117-159, these changes clarify who should be licensed, eliminating a gray area in the law, and ensuring that this aspect of firearms commerce is more regulated.

Implementation of the P.L. 117-159 Amendments

Prior to the P.L. 117-159 amendments, there had been disagreement and confusion between ATF, courts, and legislators as to how to interpret who is required to be a registered FFL. P.L. 117-159 codified a broader definition of being "engaged in the business" than under prior law. ATF further clarified this definition in 27 C.F.R. §478.13, which went into effect on May 11, 2024, and specifies that a person is a firearms dealer if

- the person sells or offers for sale firearms and represents or demonstrates to potential buyers a willingness to purchase and sell additional firearms;
- the person spends more money or its equivalent on purchases of firearms for the purpose of resale than their reported taxable gross income during the applicable period of time;
- the person "repetitively sells or offers for sale firearms" through straw or sham businesses or straw purchasers, or that cannot be lawfully purchased or possessed;
- the person "repetitively sells or offers for sale firearms – within 30 days after they were purchased; that are new or like new in their original packaging; or are of the same or similar kind (i.e., make/manufacturer, model, caliber/gauge, and action) and type (i.e., the classification of a firearm as a rifle, shotgun, revolver, pistol, frame, receiver, machinegun, silencer, destructive device, or other firearm)";
- the person sells firearms that were in their business inventory before their license was terminated; or
- the person sells or offers for sale firearms that were transferred to a personal collection prior to the time someone lost their license.

Intrastate private firearm transfers in unregulated firearms markets that do not require background checks are colloquially called *private sale exemptions* or *gun show loophole* transfers. Intrastate private transfers between unlicensed persons not engaged in the business of dealing in firearms were previously unregulated by the recordkeeping and background check provisions of the GCA. Such transfers, though, were occasionally covered by state laws or local ordinances.

The final rule acted to close a large portion of the gun show loophole by requiring a significant number of sellers to become FFLs and to conduct background checks before a sale, regardless of the state where it is made. However, unlicensed sellers can still transfer firearms without conducting a background check at gun shows or an "event sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community."

The Biden Administration's announcement of the final rule referenced an April 4, 2024, ATF report explaining that trafficking in gun shows, flea markets, and auctions was associated with the highest mean number of firearms trafficked per investigation. The final rule explained that "even a single firearm transaction, or offer to engage in a transaction, when combined with other evidence, may be sufficient to require a license." In turn, the Department of Justice estimated that 23,006 unlicensed persons engaged in the business of firearms dealing would need to apply for licenses, which would reduce—but not eliminate—the number of individuals able to sell firearms without conducting a background check.

ATF's 2026 Revised Interpretation

On May 6, 2026, ATF proposed revisions to the Biden Administration's regulations on being "engaged in the business" of dealing firearms. ATF proposes definitional changes and removals to the Biden-era regulations that specify who is "engaged in the business" of dealing firearms in a notice of proposed rulemaking (NPRM) at 91 *Federal Register* 24424. First, it would amend 27 C.F.R. §478.11 by removing the sentence that reads "a person may have the intent to profit even if the person does not actually obtain the intended pecuniary gain from the sale or disposition of firearms." This change would limit the definition of "engaged in the business" of dealing firearms based, at least in part, on the dealer's ability to profit from the sale or disposition of firearms. Second, the NPRM would remove 27 C.F.R. §478.13, thus deleting the presumptions identified in the current rule that could help identify who is engaged in the business of dealing firearms. The NPRM suggests that, together, these changes would result in the definition of "engaged in the business" mirroring what is specifically defined in statute. Consequently, the NPRM would narrow the scope of firearm sellers considered being engaged in the business of dealing firearms. ATF notes that this change would have "no effect on the scope of the law" and that the Biden-era rule did not lead to "an increase in [federal firearm] licenses" nor an increase in "background checks." Similarly, *The Trace*—a journalism outlet focused on gun violence—analyzed over 600 federal criminal firearms prosecutions and found that the Biden-era rule did not change the types of charges brought by prosecutors. Nonetheless, both supporters and critics of the NPRM argue that the rule change will make it easier for individuals to purchase firearms. Importantly, a June 2026 district court ruling in *State of Texas v. Bureau of Alcohol, Tobacco, Firearms and Explosives* granted a preliminary motion enjoining DOJ from enforcing the Biden-era final rule.

In the context of fluctuating regulatory interpretations of what it means to be engaged in the business of being a firearms dealer, Congress may consider if it wishes to clarify in statute who can be identified as someone who is trying to predominantly earn a profit through dealing firearms.

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